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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,202	01/16/2001	James E. Mathews	03797.00090	6561

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EXAMINER
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NGUYEN, JENNIFER T

ART UNIT	PAPER NUMBER
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2674

DATE MAILED: 05/27/2004

12

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/759,202

Applicant(s)

MATHEWS ET AL.

Examiner

Jennifer T Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. This office action is responsive to amendment filed on 03/12/2004.

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-7, 10-12, 14, 16-26, 29-31, 33, 35-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Varrier et al. (U.S. Patent No. 5,349,139) in view of Agulnick et al. (U.S. Patent No. 5,347,295).

Regarding claims 1, 20, 39, and 41, referring to Figs. 1-7, Varrier teaches a method for detecting an in air gesture comprising step of: determining whether a digitizing pen (20) is not in contact with a digitizing writing surface (22); determining whether the digitizing pen (20) is in motion with respect to the digitizing writing surface (22); recording positional information of the digitizing pen (20) with respect to the surface of the digitizing writing surface (22) within a moving buffer (76) when the digitizing pen (20) is determined to not be in contact with the digitizing writing surface (22) and when the digitizing pen (20) is determined to be in motion with respect to the digitizing writing surface (22), the moving buffer (76) recording a predetermined amount of positional information spanning a predetermined amount of time while the digitizing pen (20) is in motion and not in contact with the digitizing writing surface (22);

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determining when the digitizing pen (20) has stopped motion with respect to the surface of the digitizing writing surface (22) while the digitizing pen (20) is not in contact with the digitizing writing surface (22) (see abstract, col. 5, lines 4-20, from col. 6, line 3 to col. 8, line 3).

Varrier differs from claims 1, 20, 39, and 41 in that he does not specifically teach determining whether positional information recorded in the moving buffer corresponds to a predetermined in-air gesture that can be made with the digitizing pen. However, referring to Figs. 1-17, Agulnick determining whether positional information recorded in the moving buffer corresponds to a predetermined in-air gesture that can be made with the digitizing pen (abstract, col. 3, lines 22-66, col. 6, lines 11-68, from col. 8, line 10 to col. 9, line 61, and col. 17, lines 61-67). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the determining whether positional information recorded in the moving buffer corresponds to a predetermined in-air gesture that can be made with the digitizing pen as taught by Agulnick in the system of Varrier in order to provide a pen-based computing device which the behaviors are easily recognized by a computer a convenient way for users to control or invoke certain functions.

Regarding claims 2, 21 and 40, the combination of Varrier and Agulnick teaches displaying a predetermined user interface panel when the positional information recorded in the moving buffer corresponds to a predetermined in-air gesture that can be made with the digitizing pen (4) (Fig. 45, col. 8, lines 10-58 of Agulnick).

Regarding claims 3-7 and 22-26, the combination of Varrier and Agulnick teaches the in-air gesture is a down spike motion, up spike motion, right spike motion, left spike motion (Fig. 45, col. 8, lines 10-58 of Agulnick).

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Regarding claims 10 and 29, the combination of Varrier and Agulnick teaches a starting point and an ending point, and wherein the step of determining whether positional information recorded in the moving buffer corresponds to the predetermined in-air gesture is based on a relative position of the starting point with respect to the ending point (col. 2, lines 6-17 and col. 17, lines 2-60 of Agulnick).

Regarding claims 11, 12, 30 and 31, the combination of Varrier and Agulnick teaches positional information recorded in the moving buffer corresponds to a predetermined in-air gesture is based on a detected motion shape and motion size (col. 19, lines 20-21, lines 30-33 of Agulnick).

Regarding claims 14 and 33, Varrier further teaches the digitizing pen and digitizing writing surface are electromagnetic devices (col. 5, lines 4-20, from col. 6, line 3 to col. 8, line 3).

Regarding claims 16 and 35, Varrier further teaches the digitizing pen (20) is not in contact with the digitizing writing surface (22) includes a step of receiving an input indicating that the digitizing pen (20) is in a hovering state (see abstract, col. 5, lines 4-20, from col. 6, line 3 to col. 8, line 3).

Regarding claims 17-19, and 36-38, the combination of Varrier and Agulnick teaches sending a predetermined sequence of characters to an application program when the positional information recorded in the moving buffer corresponds to a predetermined in-air gesture that can be made with the digitizing pen (from col. 8, line 26 to col. 10, line 43 of Agulnick).

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4. Claims 15 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Varrier et al. (U.S. Patent No. 5,349,139) in view of Agulnick et al. (U.S. Patent No. 5,347,295) and further in view of Greanias et al. (U.S. Patent No. 5,117,071).

Regarding claims 15 and 34, the combination of Varrier and Agulnick differs from claims 15 and 34 in that it not specifically teach the digitizing pen and digitizing writing surface are optical devices. However, Greanias teaches digitizing pen and digitizing writing surface are optical devices (see abstract, from col. 6, line 23 to col. 7, line 24). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the digitizing pen and digitizing writing surface are optical devices as taught by Greanias in the system of the combination of Varrier and Agulnick in order to provide a fine line pattern or image on the resist surface.

5. Claims 8, 9, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Varrier et al. (U.S. Patent No. 5,349,139) in view of Agulnick et al. (U.S. Patent No. 5,347,295) and further in view of Altman et al. (U.S. Patent No. 6,535,897).

Regarding claims 8, 9, 27 and 28, the combination of Varrier and Agulnick differs from claims 8, 9, 27 and 28 in that he does not specifically teach a predetermined amount of positional information is about 200 points of coordinate information and a predetermined amount of time that positional information is recorded in the moving buffer is about 1 second. However, Altman teaches a predetermined amount of positional information is about 200 points of coordinate information and a predetermined amount of time that positional information is recorded in the moving buffer is about 1 second (col. 35, line 65 to col. 36, line 6). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate

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the predetermined amount of positional information is about 200 points of coordinate information and the predetermined amount of time that positional information is recorded in the moving buffer is about 1 second as taught by Altman in the system of the combination of Varrier and Agulnick in order to reduce the waiting time for execution the command.

6. Claims 13 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Varrier et al. (U.S. Patent No. 5,349,139) in view of Agulnick et al. (U.S. Patent No. 5,347,295) and further in view of Kiraly et al. (U.S. Patent No. 6,249,606).

Regarding claims 13 and 32, the combination of Varrier and Agulnick differs from claims 12 and 32 in that it does not specifically teach a predetermined in-air gesture is based on a detected motion speed. However, Kiraly teaches the predetermined in-air gesture is based on a detected motion speed (from col. 9, line 52 to col. 10, line 6). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the predetermined in-air gesture is based on a detected motion speed as taught by Kiraly in the system of the combination of Varrier and Agulnick in order to provide easy and quick access to the system functionality.

7. Applicant's arguments with respect to claims 1-41 have been considered but are moot in view of the new ground(s) of rejection.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Yamanami et al. (U.S. Patent No. 4,786,765) teaches coordinates input system.

Fukuzaki et al. (U.S. Patent No. 5,612,719) teaches position pointing device having resonant circuit.

Greanias et al. (U.S. Patent No. 5,007,085) teaches remotely sensed personal stylus.

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Greanias et al. (U.S. Patent No. 5,117,071) teaches stylus sensing system.

Fukuzaki et al. (U.S. Patent No. 5,672,852) teaches position pointing device and a position detecting device.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Jennifer T. Nguyen** whose telephone number is **703-305-3225**.

The examiner can normally be reached on Mon-Fri from 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Richard A Hjerpe** can be reach at **703-305-4709**.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, DC. 20231

**Or faxed to: 703-872-9306 (for Technology Center 2600 only)**

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, sixth-floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is 703-306-0377.

JNguyen  
05/20/04

  
**REGINA LIANG**  
**PRIMARY EXAMINER**